

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HUDSON REALTY CAPITAL FUND III, LP,
HRC FUND III POOLING DOMESTIC LLC,
and HRC FUND III POOLING REIT, LLC,

Plaintiffs,

-against-

MILLENNIA LUXURY CONDOMINIUMS
(FLORIDA) LLC, EDUARDO AVILA and
JACK KAPLAN,

Defendants.

Case No. 07 Civ. 03614 (RPP)

**AFFIDAVIT OF MICHAEL S. GORDON
IN OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS, OR, IN THE
ALTERNATIVE TO TRANSFER VENUE**

ECF CASE

This document has been electronically filed.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MICHAEL S. GORDON, being duly sworn, deposes and says:

1. I am a member of the law firm of Katten Muchin Rosenman LLP, attorneys for Plaintiffs, Hudson Realty Capital Fund III, LP ("Hudson"), HRC Fund III Pooling Domestic LLC ("HRC Domestic"), and HRC Fund III Pooling REIT, LLC ("HRC REIT") (collectively, "Plaintiffs") I make this affidavit in opposition to the motion of Defendants, Millenia Luxury Condominiums (Florida), LLC ("Millenia"), Eduardo Avila ("Avila") and Jack Kaplan ("Kaplan") (collectively "Defendants") to dismiss the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, or, in the alternative, to transfer the case to the United States District Court for the Southern District of Florida.

2. Annexed hereto as Exhibit A is a true and correct copy of the Complaint in this action, which initially was filed in New York Supreme Court, New York County: Hudson Realty Capital Fund III, LP., et al. v. Millenia Luxury Condominiums (Florida), LLC, et al., Index No. 601392/07, and then removed to this Court by Defendants, pursuant to a Notice of Removal filed

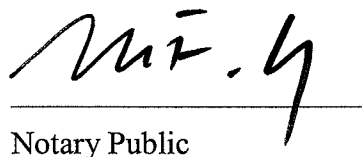
on May 7, 2007. The Mezzanine Guaranty and Mezzanine Loan Agreement at issue in this action are annexed as Exhibits A and B, respectively, to the Complaint.

3. Annexed hereto as Exhibit B is a true and correct copy of the docket sheet for the action improperly commenced by Defendants in the United States District Court for the Southern District of Florida entitled: Millenia Luxury Condominiums (Florida) LLC, Eduardo Avila and Jack Kaplan v. Hudson Realty Capital Fund III LP, HRC Fund III Pooling Domestic LLC, and HRC Fund III Pooling REIT, LLC, No. 07-20332-CIV-Graham/O'Sullivan (S.D. Fla.) (the "Florida Federal Action").

4. Annexed hereto as Exhibit C is a true and correct copy of the Second Amended Complaint filed by Defendants in the Florida Federal Action on May 29, 2007.


MICHAEL S. GORDON

Sworn to before me this
30th day of November 2007



Notary Public

MARTIN EDWARD KARLINSKY
Notary Public, State of New York
No. 01KA6146247
Qualified in New York County
Commission Expires May 15, 2010